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Permanent Forum on Indigenous Issues**Seventeenth session**

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Draft report

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Chapter I**Matters calling for action by the Economic and Social Council or brought to its attention****B. Matters brought to the attention of the Council****Recommendations of the Permanent Forum****Discussion on the theme “Indigenous peoples’ collective rights to lands, territories and resources” (item 8)**

1. The rights to lands, territories and resources are at the heart of indigenous peoples’ struggles around the world. Indigenous peoples’ relationships to their ancestral lands are the source of their cultural, spiritual and social identity, the foundation upon which their traditional knowledge systems have developed and the cornerstone of their physical and economic well-being.
2. The United Nations Declaration on the Rights of Indigenous Peoples recognizes the right of indigenous peoples to self-determination (arts. 3–4), their collective rights to own and control their lands and resources (arts. 25–27), their right to free, prior and informed consent in relation to legislation, measures and projects that may have an impact on their rights (arts. 10–11, 19, 28–29 and 32) and their right to participate in decision-making processes (arts. 5, 18 and 27). These rights are further enshrined in the Indigenous and Tribal Peoples Convention, 1989 (No. 169), of the International Labour Organization and in expanding jurisprudence developed by human rights treaty bodies, the Inter-American Court of Human Rights and the African Court on Human and Peoples’ Rights.
3. Positive developments have been achieved in setting international human rights standards for the rights of indigenous peoples to lands, territories and resources, including by regional human rights mechanisms in Africa and the Americas. The Permanent Forum welcomes those developments, including the recent decision of the African Court on Human and Peoples’ Rights in the case of the Ogiek community in



Kenya. The Forum encourages indigenous peoples and States to engage further with regional mechanisms and to implement their decisions effectively.

4. A number of States have recognized the collective rights of indigenous peoples to lands, territories and resources through constitutional or legal protection or through adjudication, constructive agreements with indigenous peoples and administrative programmes. Countries that have taken steps in that direction include Bolivia (Plurinational State of), Canada, the Congo, Denmark, Ecuador, Indonesia, New Zealand (Aotearoa), Norway and the Philippines. In other countries, including Australia, Colombia and the United States of America, tracts of land and/or territories have been set aside for collective indigenous control. The Permanent Forum welcomes that progress, while emphasizing that, even in those countries, there remains a wide gap between formal recognition and actual implementation of laws and policies that are supposed to ensure those rights.

5. Even in countries in which the rights are recognized, they are simply not being implemented, or procedures for the implementation of those rights, such as land or resource mapping, demarcation and titling, have often not been completed, suffer significant delays or are shelved. This has, for example, been observed in such countries as Cambodia, Kenya and the Philippines. The lack of enforcement of laws, as well as contradictory laws and regulations, frequently results in the de facto denial of the rights accorded to indigenous peoples. This is reported in many countries, including the Russian Federation, as observed by the World Bank. The Permanent Forum commends States for recognizing the collective rights of indigenous peoples to lands, territories and resources and at the same time urges them to take immediate steps for the implementation of those rights through necessary programmes for mapping, titling or other actions and necessary legislative reforms. The Forum urges States to report on the steps taken in that regard by its twentieth session, in 2021.

6. A majority of States have yet to grant official recognition to indigenous peoples, let alone their collective rights to lands, territories and resources, which might often run counter to the dominant models of privatization and development. The Permanent Forum expresses its grave concern about the non-recognition of indigenous peoples in those States, in particular in Africa and Asia, and recommends that States incorporate the Declaration into their national legislation and draft the policies and programmes necessary to implement the collective rights of indigenous peoples to lands, territories and resources effectively.

7. The Permanent Forum stresses that ensuring indigenous peoples' collective rights to lands, territories and resources is not only for their well-being, but also for addressing some of the most pressing global challenges, such as climate change and the destruction of nature. Studies increasingly show that advancing those rights is the most effective way to protect critical ecosystems, waterways and biological diversity.

8. The Permanent Forum emphasizes that achieving the Sustainable Development Goals is not possible without fulfilling indigenous peoples' rights to lands, territories and resources. The Forum thus calls upon States to include the recognition of customary rights or tenure of indigenous peoples to their lands and resources under target 2.3 of the Sustainable Development Goals, which calls for secure and equal access to land.

9. The Permanent Forum draws attention to the number of reports, from around the world, of acts of intimidation and reprisal, including restrictions on the ability of representatives of indigenous peoples to attend the Forum's sessions. Indigenous leaders and human rights defenders, including women defenders, face disproportionately high rates of intimidation and reprisal, as shown by various studies, including by the Special Rapporteur on the situation of human rights defenders.

10. Given that the United Nations relies on the cooperation of the people whom it serves and that the freedom to engage with the Organization is a basic exercise of fundamental freedoms and human rights for all, the Forum requests the Secretary-General, through the Assistant Secretary-General for Human Rights and in coordination with the Office of the United Nations High Commissioner for Human Rights, the Special Rapporteur on the situation of human rights defenders and other relevant United Nations mechanisms, to collect information on such abuses through regular reporting from all parts of the United Nations system and input from indigenous peoples and to submit a report to the Forum at its eighteenth session, in 2019, including on measures taken and suggested to prevent such abuses.¹

11. The Permanent Forum has paid particular attention to the World Bank's revision of its social safeguard system. The Forum continues to be concerned that the new environmental and social safeguard 7 allows the conversion of indigenous peoples' collective territories into individual ownership rights, even though it recognizes the importance of protecting indigenous peoples' collective attachment to their lands. Providing funding for States to divide indigenous peoples' lands generates conflict, irreparably harms livelihoods and traditional resource management strategies and erodes indigenous peoples' own governance structures. The Forum urges the Bank to take urgent action to remedy this situation. Paragraph 29 of environmental and social safeguard 7 should be revised to ensure that indigenous peoples maintain their collective rights to lands, territories and resources in all projects funded by the Bank.

12. The Forum requests the Inter-Agency and Expert Group on Sustainable Development Goal Indicators to make the land-related indicator operational and to report on it, including on changing land use and the security of land tenure in the traditional territories of indigenous peoples.

13. The Permanent Forum urges all funds, agencies and programmes of the United Nations system to incorporate the recognition of indigenous peoples' collective rights to lands, territories and resources into their policies and programmes at the country level and to report to the Forum on progress made at its eighteenth session.

14. The Permanent Forum expresses its concern for the indigenous peoples of Central Africa, who continue to be victims of violations of their rights to lands, territories and resources. Multiple threats and obstacles hinder their social, economic, political and legal development, including discrimination and marginalization; lack of rights to land and natural and productive resources; denial and lack of access to justice; violations of cultural rights; denial of the rights to legal recognition, political representation and participation; lack of access to basic social services; denial of the right to existence and self-development; violence against indigenous individuals and communities, including rape of indigenous women; and multiple-impact land conflicts arising from development and conservation projects that fail to take into account the rights and interests of indigenous peoples.

15. Recalling articles 3–4, 8, 18, 25–26 and 32 of the Declaration, the Permanent Forum urges Central African States to promote, recognize and protect the collective rights of indigenous peoples to their lands, territories and resources through the development of mechanisms to ensure the legal recognition of land and resource rights, the resolution of land disputes, fair and equitable redress, and the creation of permanent dialogue frameworks to facilitate political participation and representation of indigenous peoples in decision-making.

¹ See www.ohchr.org/EN/Issues/Reprisals/Pages/ReprisalsIndex.aspx.

16. The Permanent Forum urges States to provide information on developments relating to the collective rights of indigenous peoples and constructive agreements with indigenous peoples at its eighteenth session, including the following:

(a) Effective measures taken to halt land alienation in indigenous peoples' territories;

(b) Financial and technical assistance provided to indigenous peoples to map the boundaries of their communal lands;

(c) Legal and policy frameworks that have been implemented for the registration of collective titles;

(d) National legislation adopted with the free, prior and informed consent of indigenous peoples when such legislation involves their territories, lands and natural resources.

17. The Permanent Forum has been requested to give special consideration to indigenous peoples' experience with autonomy and constructive arrangements in their expression of self-determination, including through the compilation and dissemination of good practices. On that basis, the Forum invites United Nations entities and academic institutions to support its efforts to collect information on forms of autonomy among indigenous peoples.

18. The Permanent Forum urges States, in consultation with indigenous peoples, to establish national institutions responsible for collecting data on the lands, territories and water areas to which indigenous peoples have collective ownership rights by traditional use or occupancy.

19. As an advisory body to the United Nations system with a mandate to promote the implementation of the Declaration, and in accordance with paragraph 29 of the outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, the Permanent Forum requests all States to include developments relating to the rights of indigenous peoples in their regular reports to the Human Rights Council under the universal periodic review mechanism. The Forum will include those developments in its annual review of the human rights of indigenous peoples.